Is Your Customer Taking You for a Ride? – Transportation Network Issues for Auto Finance Companies

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If you travel as much as I do, you find yourself on different forms of transportation – buses, planes, cars, taxis, trains, trams, boats, rickshaws, monorails, subways, streetcars, etc. While traveling to a conference recently and using a mobile app to hail a ride to my hotel, I started thinking about some of the possible issues a finance company may need to consider when financing a vehicle that may be used by its customer when he or she operates as a transportation network company driver.

You may not be familiar with the term "transportation network company," or the acronym "TNC," but I bet you're familiar with some of the companies that fall into that category, such as Uber and Lyft. TNCs have disrupted the transportation industry to the extent that, in some places like New York City, taxi medallions, once worth hundreds of thousands of dollars, have lost significant value.

The exact definition of a TNC may vary, but generally these companies use a digital network or software application service to connect passengers to TNC services provided by TNC drivers. A TNC driver generally means an individual who (i) receives connections to potential passengers and related services from a TNC in exchange for payment of a fee to the TNC, and (ii) uses a personal vehicle to provide prearranged rides to passengers through a digital network controlled by a TNC in return for compensation or payment of a fee.

Because these TNC drivers may be using financed vehicles, there are a whole host of issues that you should consider before taking assignment of a retail installment sale contract or a lease from a dealer and during the term of the RISC or the lease. Here are some.

1. How will you know that your customer intends to use the vehicle as a TNC driver or is actually using the vehicle as a TNC driver? You might have a hint if the buyer's contract, lease, application, buyer's order, or lessee's order shows business or commercial use, but there's no assurance that these documents will ask that question. Do you ask your customer about his or her proposed use of the vehicle in your welcome call?

2. If the dealer installed a GPS device on the vehicle as a condition of the extension of credit, does the device track the vehicle and its usage so that you can determine if the vehicle is being used as a TNC vehicle? If yes, does the GPS disclosure to your customer appropriately disclose how the GPS functionality of the device will be used? Additionally, do you have a written policy and procedure that appropriately discusses how you will use the GPS device?

3. What about those extra miles that may be put on the vehicle when it's used, in part, for a commercial enterprise and not typical personal, family, or household purposes? Do you care about the extra mileage? I would think you would, as the car is your collateral, and every extra mile means the collateral is worth less. For leases, extra miles impose a big settlement at lease end – often creating a collection problem.

4. Is there an increased chance of the vehicle being involved in an accident as, arguably, it will be on the road more than if it were used for personal purposes? From the TNC drivers I've asked, being on the road more exposes them to a greater chance of being in an accident.

5. If your customer represented that the vehicle will be used for a personal, family, or household purpose in the RISC or the lease, does the customer's commercial use of the vehicle constitute a breach of the RISC or the lease? Depending on the terms of the RISC or the lease, I think it could, as typical RISCs and leases state that the vehicle will not be used for hire or rent. This issue could get even trickier under state retail installment sales acts that limit the events of default.

6. If you learn of the TNC use during your servicing and collection of the RISC or the lease, should you declare the customer in breach of the RISC or the lease? See issue 5 above and the impact of state RISAs.

7. Does the TNC use result in a failure to qualify for benefits under various ancillary products sold in connection with the sale of the vehicle (e.g., GAP, service contracts, etc.)?

8. Is the RISC- or lease-required property insurance sufficient (because it was based on a personal, family, or household purpose and not a commercial purpose), or should it be increased? If it needs to be increased, do your RISC or lease terms give you the authority to require the increase?

9. Does the RISC- or lease-required auto liability insurance cover "livery" or "for hire" use? I suspect that auto liability insurance policies state that they do not cover "livery" or "for hire" use. If that's correct, and there is an accident, the driver/obligor will have no coverage, will incur the loss himself or herself, and the credit risk increases. If there's no liability coverage for the driver, you can bet that an injured party will start looking for theories of liability (negligent entrustment, e.g.) that he or she can use to try to rope you in. Some TNCs may provide insurance coverage to TNC drivers once they've picked up a passenger, so this could provide some protection for you.

10. Does your customer properly report the income he or she receives for being a TNC driver to the state and federal taxing authorities? If not, could that mean greater exposure to the taxing authorities and, therefore, impact your customer's ability to repay his or her obligation to you?

11. Is this a case where you want to put your head in the sand and not want to know that the vehicle is being used as a TNC vehicle?

These are just a few of the issues that immediately came to mind when I was standing at the airport waiting on my ride. I'm sure there are others, so if you think of any more issues that I should add to my list, let me hear from you.

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